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April 29, 2021

Via ECF

The Honorable Mary Kay Vyskocil  
United States District Judge  
Southern District of New York

**Re:** *Steven Nachshen v. BPP ST Owner LLC and Citibank, N.A.*

**Docket No. 1:18-cv-10994 (MKV)(SN)**

Dear Judge Vyskocil:

We represented the now deceased plaintiff, Steven Nachshen, in the above entitled action. Pursuant to Your Honor's Order of February 2, 2021, we write to inform the Court that Louise Nachshen will become the administrator of plaintiff Steven Nachshen's estate. Louise Nachshen will be substituted on Steven Nachshen's behalf and she intends to continue the prosecution of this action.

Louise Nachshen has filed a Petition for Letters of Administration with the New York State Surrogate Court, County of New York. Counsel has been informed that the increase in the death toll caused by COVID-19 has significantly delayed the processing and disposition of Surrogate Court petitions in New York County. Since the death of plaintiff Steven Nachshen, counsel has worked diligently toward obtaining the appointment of an administrator for the estate and has had to tactfully work with plaintiff's grieving family to focus on this issue and make a decision as to who will be the administrator. This is difficult in normal times but made especially more difficult by the inability to communicate in person.

"The Court is authorized to extend the time in which to file a motion for substitution before or after the expiration of the ninety-day period pursuant to Fed.R.Civ.P. 6(b)." *Kernisant v. City of New York*, 225 F.R.D. 422, 427 (E.D.N.Y. Jan. 19, 2005) citing to C. Wright, A. Miller, M. Kane, Federal Practice and Procedure § 1955, at 546 (2d ed.1986). **Accordingly, we respectfully ask the Court to extend the deadline to file a motion for substitution pending the appointment by the New York State Surrogate Court of Louise Nachshen as the representative of Mr. Nachshen's estate.** *Staggers v. Otto Gerdau Co.*, 359 F.2d 292, 296 (2<sup>nd</sup> Cir. 1966) ("The amendments of Rules 6(b) and 25(a)(1) provided needed flexibility. It was assumed that discretionary extensions would be liberally granted.). Counsel suggests that a status letter be filed by July 30, 2021 to inform the Court regarding the status of the appointment by the New York State Surrogate's Court.

Now the New York State Surrogate Court controls how much longer this process will take. Upon information and belief, New York State Surrogate Court has been overwhelmed by an increase in petitions caused by COVID-19. Counsel will endeavor to work with the New York State Surrogate's Court to the extent it requires any further information or filing.

As an aside, counsel respectfully submits that the requirement under Rule 25 to file a motion for substitution within 90 days has not yet been triggered for at least two reasons. First, plaintiff's counsel letter of February 1, 2021 is not a valid suggestion of death pursuant to Rule 25 because a lawyer who represented a party before their death is not a representative within the meaning of Rule 25. *Roe v. City of New York*, 2003 WL 22715832, at \*2 (S.D.N.Y. Nov. 19, 2003) ("the suggestion of death was invalid since it was made by the deceased's attorney."). Second, a Rule 25 "suggestion of death" must identify a representative of the estate who may be substituted on the deceased plaintiff's behalf and no such representative was previously identified. *Smith v. Planas*, 151 F.R.D. 547, 550 (S.D.N.Y. Dec. 2, 1993) (holding that the 90 period in which to make a motion to substitute had not commenced because the "suggestion of death" did not identify a representative of the estate who may be substituted on the deceased plaintiff's behalf.).

Thank you for your time and attention to this matter. With kindest regards, I am

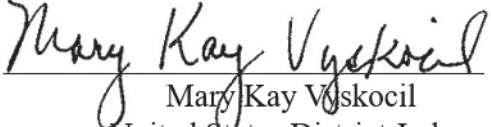
very truly yours,

/s/

Glen H. Parker, Esq.

The request for an extension of time to move for substitution is GRANTED. Status letter due June 7, 2021.

Date: May 6, 2021  
New York, New York

  
Mary Kay Vyskocil  
United States District Judge